

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Oscar Perez-Marquez,

Plaintiff

v.

Joe Lombardo, et al.,

Defendants

Case No. 2:23-cv-0938-CDS-BNW

District Court's Response to Ninth
Circuit's Referral Notice

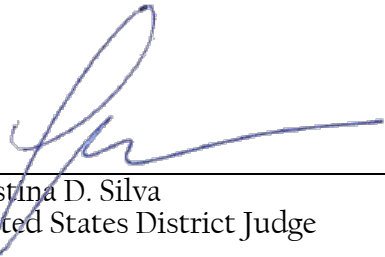
[ECF No. 11]

The United States Court of Appeals for the Ninth Circuit has referred this matter to me for the limited purpose of determining whether in forma pauperis status should continue for Perez-Marquez's appeal or whether the appeal is frivolous or taken in bad faith. Referral Notice, ECF No. 11; *see also* 18 U.S.C. §1915(a)(3). The appeal does appear to be frivolous on its face because Perez-Marquez is appealing my order affirming the magistrate judge's recommendation that this case be dismissed (ECF No. 5). I issued that order based on the magistrate judge's correct determination that Perez-Marquez's complaint lacks an arguable basis either in law or in fact. Any appeal from that order would not be taken in good faith. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

However, because no opening brief has been filed, I am unable to fully determine if the appeal is frivolous or not. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (an appeal is frivolous if it lacks any arguable basis in law or fact). Whether that is a sufficient basis to revoke in forma pauperis status under the language of 18 U.S.C. §1915(a)(3), I leave to the Ninth Circuit to decide. *Cf. Hooker v. American Airlines*, 302 F.3d 1091 (9th Cir. 2002) ("28 U.S.C. § 1915(a) requires in forma pauperis status to be authorized for an appeal as a whole and not on a piecemeal basis by particular claims.").

1 The Clerk of Court is directed to serve a copy of this response on the parties and the
2 Ninth Circuit Court of Appeals.

3 Dated: September 18, 2023

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6 Cristina D. Silva
United States District Judge